UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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JOHNSON & JOHNSON,

Plaintiff,

v. 06 CV 7685 (RJS)
Trial

GUIDANT CORPORATION,

Defendant.

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New York, N.Y.
December 18, 2014
9:30 a.m.

Before:

HON. RICHARD J. SULLIVAN,

District Judge

APPEARANCES

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(In open court)

BRADFORD CORNELL, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. COFFEY:

THE COURT: Mr. Coffey, are you ready?

MR. COFFEY: Yes, your Honor, I am.

THE COURT: Professor, are you ready?

THE WITNESS: Ready to go.

THE COURT: Come out when you hear the bell.

BY MR. COFFEY:

Q. Good morning, Professor Cornell.

A. Good morning.

Q. Would you agree that the discounted cash flow method of valuation is considered by experts to be the preeminent valuation methodology?

A. I think the discounted cash flow framework is really the standard valuation framework. I say framework because the real result of any DCF analysis is the inputs that you put into it, but the framework itself is probably the preeminent framework, yes.

Q. If the inputs are reasonable, then the output is deemed to be among the most credible ways of valuing an asset, right?

A. Yes. The dispute is typically with regard to the reasonable nature of the inputs.

Q. Understood. Now, part of your opinion is critiquing some

of the inputs into the DCF model that J&J employed and that Dr. Jarrell -- excuse me -- Professor Jarrell referred to. Is that right?
A. Well, not really, in the sense that I didn't do a study of the CRM market and say that, you know, it should be A rather than B. It was more to show that the output that you get is very sensitive to the inputs, so that as you change the inputs, you can get quite different valuation outputs.
Q. I'm going to turn to that, but before I do that, you understand that Professor Jarrell's reference to the DCF valuation is not his primary damages theory in this matter, right?
A. Well, we talked about this yesterday. He refers to the bids being the primary method, but to me the bids rested on the DCF, so I saw the DCF as being the underlying economics of the method.
Q. Right, but he used it more as a cross-check, right? A DCF valuation would put out this number, and my preference is the real preference, which is this other number. You understand that he was using DCF as contrast and in effect a cross-check to his own view of what the damages ought to be?
A. I understand that he said that, yes.
Q. In fact, the DCF valuation analysis came out with a bigger number by about 600 million than the number that Professor Jarrell was suggesting should apply here if there is a finding

of breach, right?
A. The DCF value was higher than the bid amounts that he used.
Q. In your affidavit, and I think you've just testified implicitly at least, that J&J DCF model was sensitive to various modeling assumptions. Is that right?
A. Yes.
Q. Now, there is nothing remarkable about a DCF model being sensitive to inputs. Isn't that right?
A. True, it's not remarkable.
Q. To the contrary, it would be strange if a valuation model wasn't sensitive to inputs, right?
A. Well, there are valuation models that aren't because the inputs are known to a high degree of certainty, so to the extent that the inputs become uncertain the valuation model becomes similarly uncertain.
Q. But you're not giving the opinion that the investment value of an asset cannot be determined with reasonable certainty using a DCF valuation, right?
A. That all depends on what you define reasonable certainty to be, and I don't have a definition as I sit here.
Q. In your affidavit, I don't believe you're saying this, but let me ask you, you're not saying that Johnson & Johnson's DCF model was atypically sensitive to any of the various inputs identified in your affidavit, are you?
A. Atypically compared to other major New York Stock Exchange

companies?
Q. Yes, sir.
A. I didn't make that comparison, no.
Q. Sir, you mentioned CRM, and so the next set of questions are going to be directed to projections about the CRM market as of the time the Boston Scientific and J&J bidding was taking place in January of '06. You with me?
A. Yes.
Q. Now, in connection with that, you did some analysis in your affidavit of how these sensitivities, in particular with the CRM market projections, could affect the output of the Johnson & Johnson DCF model. Do you remember that?
A. Yes.
Q. Now, in connection with your report and your affidavit, you did not compare the sensitivities of J&J's DCF model to those used by Boston Scientific or its financial advisors at Bear Stearns or Merrill Lynch. Is that right?
A. Correct.
Q. Nor did you contrast them with the sensitivities used in the models at Guidant or its financial advisors. Is that right?
A. Correct.
Q. Now, in determining the reasonableness of J&J's DCF modeling, would it have been helpful to see the models used by another sophisticated bidder for the same target or the target

itself?
A. When you said determining the reasonableness, I was determining sensitivity of them to the inputs. I wasn't necessarily saying that their efforts were unreasonable; it's just that they were fraught with uncertainty, and I wouldn't be surprised if I looked at Boston Scientific and Guidant's efforts that they wouldn't have similar uncertainty.
Q. So your trial affidavit doesn't discuss whether J&J's model was more or less sensitive to the projected CRM market growth rate than the models used at Guidant, Boston or any other financial advisors, right?
A. Correct. In my view, they're probably relatively similar in that regard.
Q. Now, there is nothing unusual about the fact that J&J's valuation was highly dependent on projections of Guidant's future sales. Is that right?
A. That is not unusual, no.
Q. Are you aware that Boston Scientific management and its financial advisors relied on those projections as well or don't you know?
A. I don't know that they were the same projections because I believe that Guidant only projected a few years and then the individual analysts had to go beyond that, but I do know that they relied on projections of those variables.
Q. You would agree that the projected growth rate of the CRM

marked used by Johnson & Johnson in or about the 2005-2006 time frame was not markedly different from what others knowledgeable in the market were projecting, right?
A. I believe that's correct.
Q. You know that based on your review of contemporaneous analysts' reports?
A. Yes.
Q. Now, at the time one is evaluating the reasonableness of someone's future growth projections, one thing you can do is compare them to historical results, right?
A. Correct.
Q. You would agree that J&J's projected growth rate of the CRM market as of late 2005, early 2006 was comparable to the historic growth rate, right?
A. As I recall, it was. I don't remember the historic growth rate as I sit here specifically, but I recall them being somewhat similar, yes.
Q. Well, indeed, to wrap this up, notwithstanding some of the uncertainties associated with the input to the DCF model, you agree that J&J's projections were reasonable, right?
A. I didn't do an independent study of the CRM market, so I really can't say. All I can say is they were similar to some of the other ones that I saw.
Q. Well, in preparing your report, didn't you come to the conclusion that J&J's projections were reasonable expectations?

A. I don't recall saying that.
Q. Would you please, sir, if you could turn to page 192 of your deposition. It's in your book, or we have it on the screen.
A. You mentioned my report and now you're saying my deposition, so...
Q. Well, we'll clear this up.
A. OK.
Q. At line 20 you were asked the question:
"Q. OK. So what was the purpose of presenting the information shown in Exhibits 21 and 22?
"A. Well, the purpose of this entire section was to provide the trier of fact with some notion about just the uncertainty associated with what I agreed were reasonable expectations and projections, but they're still uncertain expectations and projections."
Do you see that?
A. Yes.
Q. All right. So noting that you've concluded that the expectations and projections were uncertain, you did agree that the expectations were reasonable, the projections were reasonable?
A. I may have said that in my deposition, but just to be clear, I didn't conduct any independent assessment of the projections to say "I, Brad Cornell, have studied this market

and believe this certain set of projections is reasonable." I was basing that just on the observation that most of the parties were in the same approximate range.

Q. So you're not offering an opinion that J&J's projections were unreasonable. Fair?

A. That's a fair way to put it.

Q. You agree that a business has a value at any given point?

A. Yes.

Q. And that value is based on expectations at that point in time about future earnings?

A. Well, if we're talking about a traded company, that value is based on some sort of weighted average of all potential investors' expectations, so the market takes the views of thousands of different individuals and aggregates it all into a market price.

Q. But there is a component of anticipation of what the future holds. Fair?

A. Yes. Everyone would have their own anticipation, and the market would weight all those anticipations according to how much each investor was willing to invest.

Q. That's true even when the earnings projected for the future are uncertain. Isn't that true?

A. Yes, the market price will still have to reflect expectations of future earnings even if they are highly uncertain for a company such as Tesla, for example, which has

quite uncertain future earnings.

THE COURT: How about one where the expectations are based on fraud? Call a company WorldCom we'll call it, and it's based on fraudulent statements of its earnings and its income. There's a value at that point, right?

THE WITNESS: And the value will be incorrect in some sense because the investors will form their expectations not knowing the fraud, and they will overvalue the stock -- overvalue what it would be if you knew there was a fraud, and so when the fraud gets revealed you see the stock price drop dramatically because everyone changes their expectations.

THE COURT: OK. So if somebody tried to acquire WorldCom and got thwarted by a breach of contract, they should get the value of WorldCom before the fraud was discovered?

THE WITNESS: Well, no, I don't think so, that's -- I know that's related to an issue in this case, but I don't believe that would be appropriate, no.

THE COURT: OK.

BY MR. COFFEY:

Q. Well, that is a well-recognized exception to the no-peeking rule, right? If it could be established that there was fraud at the time of the appraisal, that is an exception to the no-peeking rule, right?

A. Again, I think the law ought to make that an exception. The appraisal still would do a no-peeking rule, but the

appraisal would just be very misleading because you wouldn't peek ahead and realize there was a fraud.
Q. Right. So what you are saying is that there ought to be in that instance a judicial determination that says we're going to set aside the usual no-peeking rule in this instance because of the fraud and look at it differently. Fair?
A. I think that would be the appropriate approach for a court to take.
Q. But other than the instance of a WorldCom or a fraud, that is the rare exception, isn't that right, to the no-peeking rule?
A. Well, that is an exception. You know, I'd have to search my memory banks and my documents to see if there are other exceptions, but like I said yesterday, it's not a hard-and-fast rule. There are exceptions. I didn't think of the fraud until his Honor brought it up, but that would be one exception.
Q. There are methodologies that professionals use to account for such uncertainties about future earnings, aren't there?
A. Various people use various approaches, yes.
Q. One of those methods is the selection of a discount rate to be used in a discounted cash flow analysis?
A. The discount rate is not directly related to the variability of the projections because it reflects what is known as systematic risk. Systematic risk will be somewhat relate to the variability of the projections but it's not the

same thing.
Q. But a discount rate can be used to reflect a particular appraiser's view of the uncertainties associated with a particular industry?
A. I think that when they do that, they are generally straying from what finance theory teaches and they're making a mistake.
Q. You understand here that J&J used a 9 and a half percent discount rate?
A. Yes, that was the midpoint of a range, yes.
Q. Are you aware of whether that's the same discount rate that was used by Boston Scientific and its financial advisors in their respective DCF cash flow analyses?
A. No, I don't know.
Q. You are not offering an opinion that the discount rate used by Johnson & Johnson was unreasonable, are you?
A. I'm not.
Q. I want to turn now to a few questions about your critique or observations about the Goldman Sachs sensitivity analysis.
A. OK.
Q. In your affidavit, you cite to those analyses as showing a range of value estimates between $54 and $120 per share. Do you recall that?
A. Yes.
Q. But that's not really accurate, is it? These are just numbers you found in Goldman's sensitivity analysis, right?

A. I interpreted the sensitivity analysis as determining the range of value.
Q. Would you mind turning to page 179 in your deposition, sir. We will pull it up. 179/line 7. And you were asked the following question and gave the following answer:
"Q. OK. Now, when you say that that's the discounted cash flow range of value estimates, that's not really accurate, is it? This is just numbers that you could find in a sensitivity analysis?
"A. Well, that's what I meant it to be."
Do you remember that testimony?
A. No.
Q. Did I read it accurately?
A. Yes.
Q. So Goldman wasn't saying this is the range of value; it's saying the sensitivity analysis, depending on the input you put in, this is the range that comes out at the other end, right?
A. I interpret that to be the range of potential value. Goldman may not refer to it as that.
Q. Well, you don't cite any evidence that Goldman ever said that the figures represented its view of a range of reasonable valuation estimates, correct?
A. I don't believe Goldman ever used those words.
Q. Now, when doing a DCF valuation, the purpose of performing a sensitivity analysis is to isolate and identify the input

variables that have the greatest impact on your value, right?
A. That's one thing it's used for. The main thing I see it being used for is to see how wrong your value estimate can be if you change your inputs within what you think is a reasonable range. So how big can your mistake be if things don't turn out the way you hoped.
Q. Now, a sensitivity analysis tells you what variables have a significant impact on value but not what a reasonable value is for those inputs, correct?
A. No, I think it tells you a reasonable value. You say "Here's my base case. Here's what I believe, these values per parameter." On that basis, I may choose to buy the stock. But I say, "Wait a minute. Suppose I'm wrong. Suppose I make more conservative estimates in the parameters?" Then the value comes up much lower and maybe I don't want to buy it at all. So I view it as an exercise in determining how sensitive your value conclusion is to the inputs.
Q. So it's an exercise in determining how sensitive your value conclusion is to inputs, but it's not necessarily the modeler's view of what a reasonable value is for the asset, right?
A. Well, the most reasonable value typically is their base case, but it's showing what if I'm wrong? You know, if I'm willing to invest in Tesla, because when I do my DCF it comes out higher than the market price, then I've got to ask myself, "Well, what if I change my assumptions within what I think are

reasonable ranges, what happens to my value?" And if it comes out much lower, maybe I don't want to buy it after all.
Q. Would you agree that a sensitivity analysis is not of much help in determining whether a given set of assumptions is reasonable?
A. Well, that's a separate exercise. You want to set your sensitivity so that you only use ranges of parameters that you think could happen. You don't want to say well, what if the discount rate is a hundred percent? Well, that's stupid because the chance of that is zero. So you limit your sensitivity to reasonable ranges of the parameters.
Q. You would agree that you need to do independent work to determine whether a given set of assumptions is reasonable, right?
A. That's a very important part of the exercise, yes.
Q. But you can do a sensitivity analysis without having done the work of determining what assumptions are reasonable, right?
A. Well, you could do it. I don't think it would be very informative in that case.
Q. Those two steps are largely independent?
A. Well, I just don't see the point of a sensitivity analysis where you haven't first evaluated how likely the range of the sensitivity is. You can do it, but it would just be a numerical exercise.
Q. That observation being what it its, you'd agree with me

that the two steps are largely independent?
A. They're related, but they're not the same.
Q. So the fact that Goldman performed a sensitivity analysis that showed a range between $54 and $120 per share doesn't mean that Goldman believed that the investment value of Guidant to J&J could reasonably fall anywhere in that range, does it?
A. Well, they chose a range for the parameter inputs, the sensitivities. If they didn't think it could fall within that range, why didn't they change the sensitivities?
Q. You don't know whether Goldman decided to go to the edge of what they thought was reasonable and then to further test sensitivity went well beyond that range; you just don't have any basis either way?
A. Correct, I don't have any knowledge of that.
Q. So it would be improper to derive from the fact that Goldman conducted a sensitivity analysis that resulted in a range of $54 to $120 to read into that anything whatsoever about Goldman's view about whether that bespeaks their view about the reasonable range of value of Guidant to J&J. Isn't that right?
A. It doesn't tell you what the probability of the outlier is. I think it says that Goldman says it's going to be somewhere in that range. It doesn't tell you how likely details are.
Q. Well, $54 to $120, it's going to be somewhere in that range. Their view about what the reasonable range of value

could be much narrower than $54 to $120, right?
A. Conceivably. I think of it like a bell-shaped curve and the $54 and the $120 are at the ends.
Q. At the ends of the very thin part of the bell?
A. They would be at the thin part of the bell, so they would be less likely.
Q. The mere fact that Goldman performed a sensitivity analysis reflecting a broad range of possible outcomes doesn't mean that Goldman recognized that Guidant's value to J&J was highly uncertain, does it?
A. I think it's some evidence of that, yes.
Q. Well, doesn't it just show that Goldman wanted J&J to see a broad range of possible outcomes depending on what inputs J&J chose to use?
A. I don't know because Goldman doesn't say.
Q. You have no reason to dispute that that could be the reason that Goldman did it?
A. I just don't know.
Q. Well, is it fair to say you don't know why Goldman did the sensitivity analysis?
A. Well I've never seen an investment banking analysis without one. I think they would be viewed as deficient if they didn't do it, but I don't know exactly how they interpreted it.
Q. Or why they did it in this case?
A. Or specifically why they did it.

Q. Now, you're aware that Goldman as of November 15, 2005 estimated that the break-even price for an acquisition of Guidant by J&J was a tad under $76 a share?
A. I remember that.
Q. Right.
A. Around $76, yes.
Q. In paragraph 61 of your affidavit, you note it was $75.83, right?
A. If I said that -- I remembered about 76, so that sounds about right.
Q. In that instance, Goldman gave a pretty specific value to J&J of what it believed to be the break-even price of Guidant if it were acquired by J&J, right?
A. I think that was a calculation of what would be break-even. That's relatively straightforward.
Q. Now, I believe you have read the deposition testimony of Kenneth Hitchner, the lead investment banker at Goldman Sachs advising J&J?
A. I did, some time ago, yes.
Q. Do you remember that he testified that the highest price at which Goldman could provide a fairness opinion was $75 a share?
A. I don't know if he ever made that strong a statement. I recall him saying that it would be difficult to go above that. That was where they were at some point in time.
Q. Why don't we just -- it's a very short clip. We'll just

show it.

(Videotape shown)

THE COURT: Can we stop this for a second? Make it clear what we are looking at for the record.

MR. COFFEY: We will. Your Honor, we are going to play a brief clip from page 147 of the Hitchner deposition page 147/22 through 148/line 5.

THE COURT: Great. OK.

(Videotape played)

Q. Do you remember reading the transcript associated with that?

A. I remember reading the transcript, and I remember, like I just testified a moment ago, that Goldman had trouble going much above $75, which is consistent with what he said.

Q. I think actually what he said, he'd have a bit of visceral reaction for them to go beyond 76, right?

A. 75 and 76 are pretty close.

Q. Now, Goldman's sensitivity analysis included a range of valuations as high as $107 per share, right?

A. Yes.

Q. That didn't mean that Goldman thought that $107 could be a reasonable valuation of Guidant, right?

A. That would be a very optimistic valuation since it's on the upper end of all the parameters.

Q. Correspondingly, the fact that Goldman's analysis included

a valuation of $58 per share did not mean that Goldman thought that $58 could be a reasonable valuation of Guidant?
A. That was the most pessimistic case. They would view their most reasonable cases if you think of the bell curve as those being near the middle.
Q. Under the sensitivity analysis?
A. Yes.
Q. Now, you understand that Goldman prepared these analyses for purposes of rendering a fairness opinion?
A. Yes.
Q. Do you know whether J&J relied on these analyses to determine the value that it placed on Guidant?
A. Not specifically, no.
Q. Let's turn to paragraph 56 with the heading, Marco, of your affidavit. The heading of this section is in many instances the sensitivity of Guidant's value calls into question the reliability of the existence of damages, assuming arguendo a breach occurred. So I want to ask you some questions about that opinion.
First of all, that is not an opinion that appeared in your expert report in this case, is it?
A. I don't specifically recall.
Q. As support for this particular opinion, you cite only to Goldman's sensitivity analyses, right?
A. Correct.

Q. All that you are doing is pointing to the lowest number in the range evaluations derived from Goldman's sensitivity analysis at various points in time. Isn't that right?
A. That's right.
Q. You characterize that as being an estimation of Guidant's value by Goldman, right?
A. I'd just say assuming that those low estimates are reliable, that they're less than the 63.08. That's all I really say.
Q. The low estimates from the sensitivity analysis are less than 63.08, right?
A. Correct.
Q. But Goldman never says that these figures represent a range of reasonable valuation estimates, does it?
A. No, I've already said I don't believe they say that.
Q. So aren't you using these numbers for a purpose that they were never intended to be by characterizing them as Goldman's estimates of Guidant's value?
A. I don't think I say they were Goldman's estimates. They were numbers that were within the range of estimates provided by Goldman Sachs. I don't say it was Goldman's valuation.
Q. Just to be clear, again, they were estimates within the sensitivity analysis, right?
A. Correct.
Q. But in this part of trial affidavit what you are

effectively saying is that you assume that the lowest numbers yielded by Goldman's sensitivity analysis can somehow be relied on as indicative of Goldman's estimate of Guidant's value to Johnson & Johnson, right?
A. No, I'm saying more the converse. I'm saying that if you rely on their midpoint -- that if you rely on a projection as a measure of damages, there is the possibility that damages will be awarded even though because the projection turns out not to be true and something within the sensitivity range occurs, there was in fact no real damage.
Q. Your report cites no evidence indicating that Goldman intended the results of its sensitivity analysis to be relied on by Johnson & Johnson as reasonable estimates of Guidant's value. Isn't that right?
A. That's right.
Q. I want to turn now to fair market value, Professor.
Professor Jarrell included an analysis of fair market value damages in his report, right?
A. Yes.
Q. And you take issue with that part of his report as well, right?
A. Yes.
Q. As a threshold matter though -- let me ask you: Fair market value is often a very accurate way of determining the value of an asset, right?

A. I might quarrel with the word accurate. It's a very common definition. There is a famous IRS definition that defines fair market value and it's frequently used by courts, taxing authorities and others as the measure of fair market value.
Q. Is that IRS Ruling 5960?
A. Yes.
Q. It's actually PX-62 in the books. So if you look at the cross-examination book PX-62, and you can scan it, but if you can just confirm that was the IRS ruling you were referring to?
A. Yes.
Q. Do you agree with the following quote from the ruling -- well, let me not quote it, so you're not seeing if I read correctly.
Would you agree that fair market value is the price at which an asset would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts?
A. I'd agree that's a very common definition and one I've often used many times myself, and I think I quote that in my book as well.
Q. Once again, this alternative damage theory that Professor Jarrell speaks to in his affidavit but does not identify as his preferred measure of damages is significantly higher than his preferred measure of damages, right?

A. Yes.
Q. $1.8 billion higher?
A. Don't remember how much, but that sounds close to being right.
Q. You understand that he was evaluating that much as he used the DCF valuation as a cross-check to give comfort that his preferred method of measuring damages was not unreasonable. Right? You understand that?
A. That's what I recall him saying, yes.
Q. Do you agree that -- let me back up. You give an opinion that as an economic matter it makes no sense to calculate J&J's expectation damages in reference to what Boston Scientific paid to acquire Guidant. Do you recall that's one of your opinions?
A. Yes, that didn't seem to make sense to me.
Q. Would you agree that the $80 price was negotiated between Guidant and Boston at arm's length?
A. Yes.
Q. Would you agree that Boston Scientific was a well-informed buyer willing to go forward under no compulsion?
A. Yes.
Q. Would you agree that Guidant was a well-informed seller willing to sell under no compulsion to do so?
A. Yes.
Q. Would you agree that both Boston and Guidant had reasonable knowledge of the relevant facts at the time the deal was

struck?

A. Yes.

Q. Now, because Boston Scientific was willing to pay $80 a share for Guidant, you would agree that they believed that the value of Guidant was something north of that, something above that, so that they would retain some positive present value upon acquiring the company?

A. At the time they closed the acquisition, I believe they would have believed that, yes.

Q. Sir, would you agree that investment value is the specific value of an investment to a particular investor or class of investors based on individual investor requirements?

A. And projections, yes, that's the way I would define it.

Q. You would agree that in some circumstances the investment value of an asset to a particular investor may be equal to the fair market value of that asset; for instance, where that investor just acquired the asset from a willing seller in an open auction process?

A. Under that circumstance, it would be the fair market value.

Q. For instance, when Guidant accepted J&J's bid at $71 per share, that price reflected a market valuation of Guidant at the time the bid was accepted, right?

A. That would be the way the IRS definition works, yes.

Q. That would also be true of J&J's planned bid at $75 per share since Goldman was ultimately purchased for an even higher

price. Excuse me. Let me start over there.

That would also be true of Johnson & Johnson's planned bid of $75 per share since Guidant was ultimately purchased for an even higher price assuming that the evidence shows that J&J was in fact willing to pay $75 a share for Guidant?

A. I don't think you can take it that far, because the whole point of the IRS definition is it's observable. It's a willing buyer and willing seller making a transaction. Here's the price. So we don't know what it was between accepted offers.

Q. Well, assuming that J&J was willing to pay $75 per share, Guidant's market value was no less than $75 per share at the time J&J was prepared to make that bid?

A. Well, you know, I just can't go that far because that market value definition requires an actual observable transaction. Now we are trying to infer that because Johnson & Johnson was willing to bid that but hadn't, that it's as good as a market observation, but it is still not a market observation. You can make that argument, but it's not a market price the way the IRS defines it. It couldn't be used for assessing taxes, for example.

Q. Assuming that as a matter of law the appropriate measure of damages is the difference between the J&J contract price of $63 per share and the fair market value of Guidant, the objection that you raised regarding the lack of an observable fact with regard to this $75 offer could be resolved if the Court were to

use the price that Boston Scientific was willing to pay, right, the $80?

A. Well, if the court felt that was the appropriate number, that's the observable point.

Q. I want to end by talking about your opinions regarding Professor Jarrell's use of an event study. You give the opinion that Professor Jarrell's event study does not support his damage estimates. Do you recall that?

A. Yes.

Q. Again, this is yet another cross-check that Professor Jarrell did to provide comfort that his damage number was not unreasonable, right?

A. That's the way he phrased it.

Q. Now, in your trial affidavit, you don't dispute Professor Jarrell's conclusion that there was a $7.8 billion increase in J&J's market capitalization on November 15, 2005 that was attributable to the announcement that J&J and Guidant had agreed to reduce the purchase price of Guidant from $76 down to $63 per share. You don't dispute that?

A. No, I don't.

Q. Now, you understand that Professor Jarrell isn't opining that J&J is entitled to $7.8 billion in damages, but rather only that the market's valuation of the benefit of the re-cut deal to J&J confirms the reasonableness of its various damage calculations?

A. I understand that's what he's saying, yes.
Q. You would agree that $4.3 billion, the amount yielded by Professor Jarrell's preferred method of measuring damages, is significantly lower than the market's valuation of the re-cut deal to J&J, that being $7.8 billion. You'd agree with that?
A. I can agree with the arithmetic, yes. 7.8 is bigger than 4.3.
MR. COFFEY: And on that profound note, I thank you for your time.
THE COURT: All right. Mr. Ohlemeyer.
MR. OHLEMEYER: Thank you.
REDIRECT EXAMINATION
BY MR. OHLEMEYER:
Q. Professor Cornell, let's start with the IRS ruling that Mr. Coffey asked you to look at. I think it's identified as Plaintiff's 62 in your binder?
A. Yes, I have that here.
Q. There's a section entitled Purpose. You see that on the first page?
A. Yes.
Q. Am I correct that the purpose of this rule is to value shares of capital stock in closely held corporations for estate tax and gift tax purposes. Isn't that right?
A. That's what it says, yes.
Q. Is that valuation designed to capture a price at a moment

in time?
A. Yes.
Q. That is not a situation in which the future performance of that stock or the future value of that asset is evaluated in any way?
A. Well, not the future performance. You can say that the future value is in some sense encapsulated if there's projections of some type. But what the IRS is trying to do is get an objective measure that they can use for tax purposes as of a certain date, such as the death day of an individual.
Q. Right. And it brings me to the broader point --
THE COURT: Well, the next line says that the methods discussed herein will apply likewise to the valuation of corporate stocks on which market quotations are either unavailable or of such scarcity that they do not reflect the fair market value.
Do you think that last sentence could be applicable here involving the Guidant stock in December/January of 2005 and 2006?
THE WITNESS: Well, if, for example, Guidant had been owned -- it was a family company.
THE COURT: But it wasn't; we know it wasn't.
THE WITNESS: But if the IRS had to appraise it at that point in time, they would attempt to do an appraisal for estate tax purposes that reflected its market value at that

point in time.

THE COURT: But Guidant was publicly traded, so it had a market value at every one of these points in time.

THE WITNESS: Correct. If it's publicly traded, then they will take the publicly traded price as being what the buyer or the seller in almost all circumstances.

Q. And that brings me to the point I want to start with is that there's a difference, isn't there, between valuing a business at a moment in time conducting an appraisal of a business for a particular purpose and determining damages that result from the failure of one party to act or the actions of another party?

A. Well, there certainly can be. An appraisal or a valuation is an estimate at a point in time, often in the past. Whether or not that appraisal is a proper measure of damages depends on the legal context in which it's placed.

Q. And the whole discussion of -- I think it was referred to as -- the no-peek rule with respect to appraisals reflects the fact that as part of the appraisal process, you were trying to determine value at a particular moment in time?

A. Yes. I mean, I will give you a perfect example. My father owned a company. He passed away about a year ago. It was a privately held company, and the IRS and our family will have the company appraised as of the date of his passing and estate taxes will be based on that appraisal no matter what happened

to the company after my father died.
Q. Right. So does an appraisal, as you've just described it, answer the question of what actual damage might be to a party as a result of non-performance of a contract?
A. No, not necessarily, because the appraisal will be based on projections whereas the damages, depending on the legal context, could be based on what actually happened and whether the party was in fact harmed.
Q. Would you agree with me that determining economic damages often requires, and can even benefit from, the use of business valuation methods, but a damages expert or somebody trying to calculate damages is not limited to the data that was available on the valuation date?
A. Well, I've said this in my book too; that damages is a broader concept than appraisal. Appraisal has a specific set of tools, and those tools may or may not be appropriate for estimating damages depending on the legal context.
Q. Now, Mr. Coffey asked you some questions about investment value. Is there any evidence you are aware of that either Boston Scientific or Johnson & Johnson was buying Guidant in order to resell it at a later date?
A. I think the evidence is just the reverse. They were both companies deeply involved in those businesses, and their projections, and particularly their synergies, all indicated that they planned to operate the company for at least ten

years.
Q. What do you mean by synergies?
A. Synergies are benefits that arise because you're mixing two companies and getting cost savings and other benefits thereby. Clearly, you wouldn't get any synergies if you expected to buy the company and shortly resell it.
Q. And those synergies, when are those synergies realized or when can they be realized?
A. Over the years or even decades during which the two companies are merged and operate together.
Q. When Mr. Coffey posed the hypothetical yesterday about buying something for, I think he said, $10 that was really worth $13 and pocketing the $3, is that the same kind of situation as when a company is buying another company in order to either create or exploit synergies?
A. There are two ways to speak of pocketing the $13. One is to buy it at 10 and hopefully flip it right away to someone at 13, because they're willing to pay more. The other is to buy it at 10 and then manage it better, take advantage of synergies over years and years, and that in fact allowed you to earn the added three. But there are two different ways of getting the three.
Q. How does a business person evaluate the potential value of those synergies at the time they have to make that decision?
A. They make projections of what those synergies are going to

be or hope to be and then they discount them back to present value.
Q. We've talked a little bit about those projections. You're familiar with the projections Johnson & Johnson made about Guidant's future performance?
A. Yes.
Q. Am I correct that Professor Jarrell didn't do his own projections or create any new projections, did he?
A. Yes, Professor Jarrell actually did not do an appraisal. We've talked a lot about appraisals, but independent appraisals require the appraiser to do all the vetting and due diligence. He did not do an independent appraisal. He either relied on the bids directly or indirectly on Johnson & Johnson's appraisals.
Q. The Johnson & Johnson forecasts were done by Johnson & Johnson. Isn't that right?
A. Yes.
Q. They weren't Guidant forecasts that Johnson & Johnson was looking at?
A. No. I think Johnson & Johnson looked at Guidant's forecasts, but the forecasts on which they based their valuations to my understanding were all Johnson & Johnson's forecasts.
Q. And they were forecasts that involved operating a business that Johnson & Johnson had not previously operated?

A. For the most part, yes.
Q. In a market for the most part that they weren't in?
A. That's correct.
Q. And those predictions and forecasts were made relatively or approximately in the time frame of 2005-2006?
A. The main ones that I looked at, yes. They also made some back in 2004 before the $76 bid.
Q. They predicted what was going to happen between 2004 and 2014. Isn't that right?
A. Yes.
Q. Do you recall what percentage of the value in those forecasts resulted from the operation of a CRM business?
A. I recall in the order of about 75 percent.
Q. Were those projections or did those projections incorporate forecasts about the growth rate of that business?
A. Of course. Generally the key driver of value in a DCF model is your forecast of the future growth and profitability of the business.
Q. In particular, was the key driver of that forecast associated with growth of the CRM business?
A. That was a very important parameter in determining the estimated value from the projections.
Q. When you do a forecast like that, how much of the expected value occurs in the period beyond the date of the forecast?
A. Well, all of it beyond the date of the forecast since it's

all in the future.
Q. That's a bad question. Beyond the temporal range of the forecast. So I think you said that these forecasts involved predictions about the CRM market through the year 2014?
A. Correct.
Q. Was there value beyond 2014 built into those forecasts?
A. Yes. And that -- just to answer that question fully, that value depends a lot on the growth rate over the ten years because the value beyond ten years starts from whatever level you were at in year ten, and what level you were at in year ten is highly dependent upon how much you grew from year one to year ten.
Q. Am I correct that neither you nor Professor Jarrell were asked to opine about the reasonableness from a corporate finance perspective of the way Johnson & Johnson or Boston Scientific or anyone else prepared a model to predict the future in this case?
A. Neither of us did independent vetting of the key inputs or studies of those markets.
Q. But you did opine that those forecasts were sensitive to a couple of inputs?
A. Well, that the valuation outputs were sensitive to the key inputs, yes.
Q. I guess it's almost obvious -- perhaps not to a lawyer but to an economist -- if the inputs are either unreasonable or

unreliable, the output is going to be less reliable or less reasonable?
A. Correct.
Q. In preparing your report, did you have an opportunity to compare the actual CRM growth rate during the time period that was described in those forecasts?
A. Yes.
MR. COFFEY: Your Honor, I'm going to object. I didn't go into this on cross. It's in his trial affidavit, and I chose not to pursue it on cross. I think this is beyond the scope.
THE COURT: Well, look, the point of a trial like this is not to sort of religiously guard beyond the scope. I think I'd like to hear it, so I'm going to allow it. Go ahead.
Q. So my question is: How does the reality of that market's performance compare with the forecasts about it that were made in 2004-2005?
A. Well, in my report I talked about that, and in my trial affidavit I updated it because we had a lot more data. The bottom line is that the growth rate projected at the time was on the order of 13, 14 percent, and the actual growth rate over the ten years has been more like zero to one. So the real value-creating element on which the projections were based failed to in fact occur.
Q. Let me ask you a couple of questions about -- I think it's

been referred to as -- reservation price. What is the reservation price as it's been described yesterday and this morning tell you about the actual value of an asset?
A. Well, the word "actual" is what's hanging me up there. What is actual value as opposed to value, if you could clarify that for me.
Q. Let me ask a different question. Does a reservation value change over time?
A. Oh, sure. As soon as your projections change, your reservation value changes, and I documented that in my report and affidavit how Johnson & Johnson's reservation -- apparent reservation value kept changing.
Q. Are there reasons why management would be willing to bid higher than the investment value of an asset?
A. There are possible reasons, yes. I think Professor Coates discussed some of those.
Q. Let me ask my first question without the word actual. Is reservation value an indication of value at a moment in time?
A. The reservation value is the most you are willing to bid based on your projections at that point in time.
Q. If you are a strategic buyer -- and let me stop and make sure we understand what I mean by that. A strategic buyer is a buyer who is not buying to flip the asset, as you said earlier, but to extract synergies from it?
A. To operate it.

Q. Operate it. If you are a strategic buyer, is your reservation value identical to a different strategic buyer's reservation value for the same asset?
A. No, typically not, because different strategic buyers will have different views on the benefits that can be achieved by operating the asset.
Q. What, if anything, does reservation price tell us about the loss Johnson & Johnson might have suffered as a result of not acquiring Guidant in 2006?
A. Well, you have to be very precise in defining the terms there because, in fact, if we take the perspective of today, it's my view that the loss Johnson & Johnson suffered because they didn't buy Guidant ten years ago is negative. They actually dodged a bullet. They were better off not buying it from the perspective of today than they would have been with the company.
Q. Let me ask you a quick question about Reckson, the Reckson transaction that was discussed yesterday.
Am I correct that you actually included Reckson in a analysis in your trial affidavit described in footnote 10, paragraph 22?
A. If we're computing the average jump between the first bid and the acquisition price, I did include it there.
Q. How did it change your opinion about the likelihood of the initial bidder winning when a second bidder appears?

A. Well, you still saw on average a substantial jump between the first bid and the actual acquisition price.
Q. Did the likelihood that the first bid succeed in your data set even with the inclusion of Reckson?
A. It still was unlikely.
Q. You mentioned Carl Icahn. What was it about Carl Icahn's participation in that bid that made it unique or caused you to exclude it?
A. Well, there are a whole lot of factors which are not uncommon, I suppose, for Mr. Icahn. Do you want me to run through -- there's four or five. Do you want me to run through the whole list?
Q. The big ones.
A. Here are the big ones: The first one is that Mr. Icahn already owned the target when he started stirring the pot, so he had an incentive to get the price up even if he didn't want to acquire the company because he could profit from the shares that he already owned. And then as the transaction got going, he acquired more shares.

Then in order to close the transaction, he brought in two partners, and those partners pulled out within a matter of days, one claiming that he thought the price was too high.

Then without the partners, Mr. Icahn came back with another offer involving some complex preferred stock that the board of the target rejected immediately, at which point

Mr. Icahn made a noisy exit and said he's not going to pursue it.

All in all, it seemed like a very unique and somewhat odd sequence of events that suggested, as some pundit said at the time, that Mr. Icahn was never really that intent on acquiring the company but in profiting from his holdings.

Given all that dust, if you like, I felt it was best to exclude the observation, but I did put it back in the average in case someone disagreed with me.

(Continued on next page)

Q. And that's at Footnote 10, Paragraph 22?
A. Yes.
Q. All right. Now, Mr. Coffey then asked you a hypothetical yesterday related to this situation, I think. He asked you to assume that on the 30th of December, Boston Scientific walked away from the Guidant transaction. Do you recall that?
A. Yes, and I recall saying you have to define what you mean by walked away.
Q. Let me ask you to assume a couple of other things. Let me ask you to assume that rather than just walk away, they announced a continued interest in Guidant, but that they needed time to restructure or rethink the structure of their deal or that -- Well, let me just stop right there.
How does that hypothetical then impact the opinion you offered about the likelihood that the deal would have closed at $63 a share after Boston Scientific announced its intention to make a bid?
A. Well, I think under that circumstance, it would be very unlikely that the 63.08 would be accepted because shareholders and other key parties, like the board of Guidant, would recognize that Boston Scientific truly believes the assets are worth 72 and they're willing to pay 72, but they have impediments to get around that may take a little time.
Q. Now, Boston Scientific's December 5th announcement was more than a rumor, as we -- as that phrase has been discussed in

connection with your opinion?
A. Yes. There was the detailed letter explaining the offer.
Q. Was there anything in that letter to suggested Boston Scientific wasn't interested in actually acquiring Guidant?
A. No.
Q. And in your experience, do companies that have an interest in, express an interest in acquiring an asset, pursue that asset with some purpose?
A. Well, particularly when it's a strategic acquire. I mean, we're talking about a major company, and you would assume and all investors would assume, that Boston Scientific had done its homework, too, and completed its own DCF evaluations and projections; and that when they were offering 72, they thought it was because they could operate those assets for more than 72 to them, and they'd be unlikely to change their mind about that. This was not an attempt to stir the pot and somehow benefit from a toehold in Guidant, for example.
Q. All right. Let me show you now what I think is finally marked as Defendant's 226. The Court and counsel have seen it a few times. This is a chart that includes Professor Jarrell's stock price chart that was something Mr. Coffey showed you in a different form yesterday.
A. Yes.
Q. This, in a sense, looks a little bit like your Exhibit 6, but not quite, doesn't it?

A. Yeah, it's the same type, same flavor of thing.
Q. All right. Just to be clear, there was some discussion yesterday about what happens to stock in December, or I think I recall you talking about why December is not always a reliable month to draw conclusions about stock price. Do you recall that?
A. Well, I said the very year end is particularly questionable because of tax effects and reporting effects and so forth can affect the price.
Q. Well, take a look at plaintiff's 55 in the binder Mr. Coffey gave you. Small point, but I just want to -- it's the one, two, three, fourth paragraph up that starts "It seems ridiculous"?
A. Yes.
Q. You see the statement there is, "It seems ridiculous, but you have to remember that arbs" -- arbitrageurs?
A. Yes.
Q. -- "have whipsaw. It's difficult to commit new capital, especially in December when we get our bonuses. People will be more aggressive in January because January is the best month to lose money," he said.

Is that consistent generally with what you were trying to say yesterday about the reliability of December stock prices?
A. Yes. That's another factor, yes.

Q. Now, am I correct that, in your opinion, the market's reaction to the announcement that Boston Scientific was going to make an offer tells you something about the probability that the $63-a-share offer is likely to succeed?
A. It does.
Q. And what does it tell you?
A. That the $63-a-share offer is very unlikely to succeed. Something else is likely to happen.
Q. Right. Now, you were shown a portion of Mr. Best's deposition yesterday. Let me show you a couple other questions and answers from that deposition, and then ask you a question based on that. Let me please have Page 94, Line 5 through Line 15.

(Video being played)

All right. Now, let me ask you to take a look at Mr. Best, Page 32, Line 17 to Line 20.

(Video being played)

Now, let me ask you to look at Page 33, Line 17 through 23.

(Video being played)

All right. Let me ask you to look then at Page 68, Lines 9 through 12.

(Video being played)

All right. Now, with those additions and based on what little you've seen of Mr. Best's deposition, let me ask

you a question Mr. Coffey didn't ask you. How does that testimony effect your opinion about the likelihood that $63 a share would have been the winning bid for Guidant, once Boston Scientific made its announcement on December 5th?

A. Well, I hadn't seen this before today, but now seeing it, it's exactly consistent with what I testified to Mr. Coffey yesterday, which is between 63 and 72, that's a $9 gap involving, I think, four or five billion dollars.

So that's a lot of money for people to be able to divide up to get the deal done. And I think what Mr. Best is saying is, given that gap, we could have gotten something done to get our deal through. The shareholders would be very foolish to accept 63 because we can get them more, even if we have to not use Abbott but use some secondary route.

Q. And, finally, Professor, let me show you a question the Court asked William Weldon, who was the CEO of Johnson & Johnson at the time of this transaction. It's at Page 84 of the transcript, Line 17, and it continues on to Page 85, Line 1.

And the question is: "Are you confident that shareholders would have taken it at 63?"

And the witness answers: "Once again, it's hard to say. The discussions -- you know, to say whether they would have voted. As I say, the documents that I saw, there were people that liked the 76 better, but would have supported 63,

and there were others that said they wouldn't have supported it. So I don't know if it would or would not have. We felt it would have in discussions that we had, but you don't know -- you don't really know until they vote."

Now, if you assume that Mr. Weldon gave that testimony, how does that testimony affect your opinion that $63 was not likely to be the winning bid after the Boston Scientific announcement on December 5th?

A. I think it's consistent with what I've said, and I would even take a somewhat stronger, I think, position that once they've seen a valuation by Boston Scientific indicating 72 is a minimum amount, who knows? It could pay more. If I had been a shareholder, I would have been very reticent to take 63.

THE COURT: I thought yesterday you said that you weren't aware of a situation in which the board approved a takeover price and the shareholders, nonetheless, rejected it.

THE WITNESS: I wasn't aware that it happened in another circumstance, but I haven't seen a circumstance like this, where they're considering 63 and another major strategic offer comes in at 72. I think what happens then is the vote never occurs, as it didn't here. The negotiations go on and something else happens.

THE COURT: Okay.

MR. OHLEMEYER: Thank you, Professor. Those are all the questions I have.

THE COURT: That's it. All right. Mr. Coffey?

MR. COFFEY: Thank you, your Honor.

RECROSS EXAMINATION

BY MR. COFFEY:

Q. The clips of Mr. Best that you were just shown, you recall the sequence, it showed the piece I showed you yesterday?

A. Yes.

Q. Right? Which I think we agreed in the context of our questions that demonstrated that Boston would not move forward -- the Boston board would not move forward without a sign-on-the-dotted-line partner, that was the reasonable takeaway from the clip I showed you, wasn't it, in isolation?

A. Maybe I can say that in isolation, but I'm certainly not an expert in interpreting the limited clips of deposition.

Q. Well, the clips that follow that clip, which I note for the record the clip I showed you was Page 94 of the deposition. The excerpt when Mr. Best said it would have been their preference, do you think that was a follow-up question and he softened his position, is that your takeaway, given the sequence in which it was played?

A. I wouldn't go so far as to say that.

Q. Would it surprise you if I told you that every one of those three clips that were played after the clip I pointed out to you occurred many, many -- with one exception, many pages before Mr. Best's testimony about what the Boston board would

not allow if they didn't have a sign-on-the-dotted-line partner?
A. I really don't know.
Q. I think the one exception is just a page before that, but all three of those quotes, clips, you were shown were before Mr. Best, towards the end of his deposition, finally acknowledged that that condition existed. You were not aware of that, right?
A. Yeah, my opinion was not based on anything that Mr. Best said, actually.
Q. You were shown a clip about people reaching out and being interested and, again, Guidant's lawyers didn't share any of that before you came to trial, right, any of this Best information?
A. I had not seen that.
Q. So I assume they didn't tell you about the efforts of Boston Scientific and its financial advisers to recruit Medtronic, unsuccessfully, to be the divestiture party, right?
A. I don't recall that.
Q. There was a specific reference to Medtronic at some point in the redirect examination; so --
THE COURT: Are you testifying about that, or are you asking him a question?
MR. COFFEY: Withdrawn. I'm withdrawing.
Q. Your affidavit doesn't include any reference to evidence

that there were alternatives to Abbott being considered by Boston, right?
A. Not specific alternatives, no. I'd be shocked if there weren't, but I didn't examine them.
Q. You were asked some questions about the difference between a purchaser who buys and flips and someone who buys and operates. Do you remember that line of questioning?
A. Yes.
Q. And that, I guess, is called a strategic buyer is looking for views that there's synergies that are possibly involved in acquiring another asset, right?
A. Typically, all strategic acquisitions do have projections of synergies.
Q. And counsel pointed out, and you agreed, that Johnson & Johnson was not going to buy and resell in this instance, right? It was going to keep Guidant?
A. I agree, yes.
Q. And that's in part because it believed that there were synergies that were there, if they were to acquire Guidant?
A. Yes.
Q. And so one of the benefits that Johnson & Johnson expected, if it did acquire Guidant, was those synergies, right?
A. Yes.
Q. You mentioned that Professor Jarrell did no independent valuation analysis. Is it fair to say you did no independent

valuation analysis, yourself?
A. I think that's fair.
Q. And, again, you were asked a number of questions about what Johnson & Johnson knew and didn't know when it did its projections. I just want to confirm, you're not offering any opinion that Johnson & Johnson's projections in or about January of 2006 were unreasonable, right?
A. I'm not saying they were unreasonable.
Q. I want to follow up on this idea that reservation value could change over time. Do I understand your testimony to be that -- well, let me back up. Damages can be a function of reservation value?
A. All depends on the legal context the Court chooses to apply.
Q. So assume for the moment that the Court decides that it will factor into its appraisal, it's view of damages at a point in time several years earlier, factor in the reservation value of an asset. Are you with me?
A. I think so, but go a little farther and I'll see if I am.
Q. Okay. Sure. Since reservation value changes over time, does it follow that damages that would be awarded would change over time?
A. If the damages were to be based on the reservation values, then, by definition, they would change. Usually a damage is a difference between a reservation value and something else.

I'll just hypothetically here say $63. So if we're talking about a damage of a difference between 63 and some projected reservation value, then it would change if the reservation value changed.

Q. And so if the reservation value today was -- Can you flesh that out for me? Give me a --

A. Well, suppose that, you know, the decision is one where I'm going to give you a damage based on your projections and how they compute into a DCF model. Well, then it depends on which set of projections of mine you're using and when I have those projections.

Q. I guess I'm confused. When you say reservation value changes over time, you're talking about as you view your projections leading up to the purchase or the frustrated purchase, or are you talking about after the date of breach, years down the road the reservation value changes?

A. Well, it changes both, but reservation values means prior to the transaction. So if you look at Johnson & Johnson projections prior to the transaction, they're changing all the time.

Q. Okay. I'm glad we talked about this. But there came a point in time where they decided to put their money down and offered it, and, at that point in time, there would be a reservation value associated with that bid, right?

A. There would be a particular reservation value at a

particular point in time associated with a particular bid. First, it was 76, and then it was 63, 68, 71 and so forth.
Q. Now, going into the future, and let's just say that the reservation value as of the bid was X, it's a number, but let's just call it X. As we go into the future and a Court is asked to decide what the damages were as of the date of the bid, are you saying that X might be different, it might be larger or smaller, when you say reservation value changes over time?
A. Well, the reservation value would -- I mean, the estimated value of the company, using my projections, is going to change. I don't know what sense it is to speak of a reservation value once you own the asset.
Q. No, but this is a situation where the sale was not able to go through. So I want to buy it. I put my money on the table. They don't -- for whatever reason, there's a breach, I don't get to do it, and my reservation was X, my reservation value, and that's what I want to claim in damages. Okay? I just want to know that I understood what you said before. Years down the road, X might be different?
A. It almost certainly will be.
Q. And so the awarded damages will be different down the road based on whether the reservation value went up or down?
A. It could be. If the damage analysis is one of measuring were you actually harmed, as opposed to did you think you were harmed based on your projections at the time, those are two

different legal constructs.

Q. So I guess I'm going to go into it now. You talked about the CRM market working out to be much less robust than everybody involved thought it would be, right?

A. I think that's fair.

Q. Okay. So and based on what you're saying today, your input on this is that Johnson & Johnson would actually have lost billions of dollars, right?

A. I think if you compare today whether Johnson & Johnson is better off not having acquired Guidant than having acquired it, the answer would be yes.

Q. Right. And so if the Court standard was, sitting here in 2014, that that's the standard, that testimony would be relevant to that issue, right?

A. That's right.

Q. All right. Now, if --

THE COURT: What's your basis for saying that? You might be right, but what's your basis for saying it?

THE WITNESS: Well, there are two bases. You can put the low-growth rates back into the projections at the time when you get values that are many billions less, or you can look at how much Boston Scientific has lost and written off after they acquired the assets.

THE COURT: And you've done that?

THE WITNESS: Well, the second, I've seen documents in

the 10-Ks and all that have been done. The first one, I have some numbers in my reports.

THE COURT: Okay.

BY MR. COFFEY:

Q. And so we freeze the record today. Trial is over. The judge goes to me, and he hypothetically finds liability and comes out with a damage number. In your view, it should reflect the fact that, in the last eight years, the CRM market has done poorly, correct? That's your --

A. No, I'm an economist, and actually, the framework is one that the Court and the attorneys are going to have to determine. I'm just saying that the framework is critical to the answer you come up with.

Q. All right. And then so I just want to be sure. But you point out in the -- in your trial affidavit how poorly the CRM market did for a reason, right?

A. The reason is to demonstrate that Johnson & Johnson, in fact, by not acquiring Guidant received a benefit, not a harm.

Q. And so if this trial were postponed before we played the Stoll video, and we hold it off for two years, and the CRM market comes back gangbusters next year, 25 percent growth, are you saying that Judge Sullivan should take that into account when the trial reconvenes in 2016, what happened in those two years?

A. That would affect the harm up to the date of trial, yes.

Q. Now, just to confirm, although you were asked on redirect about the period post-January of '06 with the CRM market growth, I just want to confirm. Valuations are forward-looking estimates based on information available as of the valuation date, right?
A. Appraisals are that, yes. I use the word appraisal rather than valuation, but if you want to call them valuations, yes.
Q. Well, do you recall the use of the term valuation in your deposition; that the questions were posed about valuations, not appraisals?
A. Well, the two are synonymous. Valuation gets used so many ways it tends to confuse people, and if you mean appraisal, which is figuring out what a business is worth, yes, that's true what you just said.
Q. Well, you agreed at your deposition that it's not appropriate to criticize valuations based on events that occur after the valuation date, right?
A. If the goal is to do an appraisal, that is correct.
Q. A valuation?
A. Okay, or a valuation. A valuation has to be done based on projections at the time, but harm or damage doesn't necessarily have to be assessed that way.
Q. All right. The judge will decide that?
A. The judge will decide that.
Q. You're not suggesting that Johnson & Johnson knew or should

have known that the CRM market would grow at a slower rate than it projected, are you?
A. No.
Q. And by the way, you don't know what would have happened to the CRM market if Johnson & Johnson, instead of Boston Scientific, had acquired Guidant, do you?
A. I don't know. My strong suspicion would be about the same thing, but I haven't done that analysis.
Q. Do you agree that Johnson & Johnson would have had considerable resources to devote to driving the CRM market?
A. I believe both companies would have. If you have a good opportunity in America, you can get the resources to finance it.
Q. Resources are important if you want to do something like drive a market?
A. Probably.
Q. Right. Do you have any idea of the relevant size of the companies at the time of the bidding over Guidant?
A. I know Johnson & Johnson was substantially larger.
Q. I'm going to show you a slide that -- I'll first show you the market. No, no, the revenue. Sorry.
I want to show you a slide that's derived from publicly filed reports, and let's show the 2004, 2005 revenue by sales for Johnson & Johnson. Do you see they're 47 billion in 2004 and a little over 50 billion in 2005; do you see that?

A. Yes.
Q. All right. Let's see what Boston's revenues were in those two years. Do you see those?
A. I do now, yes.
Q. So the revenues are on the order of eight or nine times as much, right?
A. Based on what I'm seeing there, yes.
Q. All right. Now, how about the market cap? Let's show the slide of the market cap. So again, derived from public sources, the market cap of Johnson & Johnson in or about January, I believe, of '06 is about 185 billion, and Boston Scientific is about 21-and-a-half billion; do you see that?
A. Yes.
Q. Now, what I'm going to do next is I'm going to overlay on each of these market caps the size of the respective deal that each company wanted to do. The one that was unsuccessful, J&J at 75, go ahead and do that, and then the Boston Scientific at 80; do you see that?
A. I do.
Q. And you would agree with me that the size of the deal that Boston Scientific entered into was larger than the market cap of Boston Scientific itself, right?
A. Yes.
Q. Now, would you agree with me that Johnson & Johnson would be the company that would be in the best position to devote the

resources necessary to turn around a troubled Guidant subsidiary?
A. No, not necessarily.
Q. Would you agree with me that it would be Johnson & Johnson, not Boston Scientific, that would have relatively more resources into driving the market, CRM market, to have the CRM market's growth rate be higher than the one that was observed when Boston was running Guidant?
A. I agree they're bigger, but that's all I agree. I don't agree that bigger companies necessarily operate more efficiently or can bring resources to bear on profitable undertakings than smaller ones.
Q. Now, assuming that even if it's declining market share, would you agree that Johnson & Johnson would be in a better position to try and grab more of that declining market, the more share of the declining market?
A. If grabbing share of the declining market was a positive net present value project, the way we discussed it, I think both companies would be about equal because you can get capital in the United States to fund what the market sees as positive net present value projects. We have companies with no revenue raising a lot of capital because the market is convinced they have opportunities.
Q. Well, would you agree with me that at the time they bought Guidant, in a deal that was larger than its own market cap,

that Boston had incurred significant multi-billion-dollar debt?
A. Yes.
Q. Would who you agree that it was, in fact, stretched pretty thin financially?
A. I don't know.
Q. So --
THE COURT: Sorry. Do you have any basis for knowing whether the debt burden of Boston Scientific contributed to the growth rates or lack of growth rates in the CRM market?
MR. COFFEY: I think the witness thinks that question was put to me.
THE COURT: Oh, no, that's to you.
THE WITNESS: I thought it was to you.
THE COURT: No, I wouldn't --
THE WITNESS: I would kind of doubt it because that's the whole point of having such a deep and wonderful capital market in this country. If you have good opportunities, you can get them financed. So if the market thinks it's a good opportunity, you can get the money, and if the market doesn't think it's a good opportunity, you should think twice about getting the money.
THE COURT: Here's my question. It may be beyond your expertise, but what is responsible for the growth rates? Is it some demand outside of the companies that control the market, that are the dominate providers in the market?

THE WITNESS: Typically, yes. I mean, I can't say specifically in this case, but typically, the growth rate depends on overall economic conditions, and here, we had a great recession, and the nature of the product and the public's demand for it.

THE COURT: What do you understand the CRM market to include?

THE WITNESS: Devices for managing cardiac rhythm that are implanted or put into patients.

THE COURT: Okay. And how big was that market? How many players were in that market producing?

THE WITNESS: Relatively small. It's a very specialized market, and that's what made Guidant valuable.

THE COURT: And so in a small market, with three or four major providers, does the management and debt burden of one of the providers affect the growth rates of the market?

THE WITNESS: Well, management, I suppose, always would have, if one of these companies were mismanaged, but assuming that they're both good, well-managed companies, I don't think financial constraints or size would limit it.

THE COURT: Well, it would seem to me that the market for shoes is what it is, and if Nike is mismanaged, you think that the growth rates in the shoe market are going to sink, or just somebody else is going to get a larger share of that market?

THE WITNESS: In that case, somebody else would just get it.

THE COURT: But in a small market, like this, with only a handful of providers, it would be a different answer?

THE WITNESS: By mismanaged, what I was thinking of was maybe you put out a device that doesn't work right and a patient dies, and then you have lawsuits and government investigations, people stop using the -- doctors stop using the device in the way it should be. None of this I know, I have no idea if it happens.

THE COURT: Right. Okay. I mean, all this is beyond really what's in your affidavit or your report?

THE WITNESS: Yes.

THE COURT: Okay. Sorry to hijack your recross.

BY MR. COFFEY:

Q. But back to the shoe example. I don't know if Ralph Lauren does shoes, but Ralph Lauren does clothing. And if they were to buy a shoe -- purchase a manufacturer and package their products together, the consumer demand for some of the existing lines, clothing in this example, could bring along additional shoe sales, right, if they're packaged properly?

A. Yes, but there would be no reason that a small company can't package them properly by engaging in contracts and taking advantage of opportunities in the marketplace.

Q. Well, you're aware that Johnson & Johnson has a huge

portfolio of surgical products that it sells to hospitals, healthcare providers, things of that nature?
A. Yes.
Q. Right. And Johnson & Johnson would have been in a position to say, as part of our portfolio, as part of our package, we think your approach to healthcare should include these products from our new subsidiary, Guidant. And it would be able to have an opportunity to increase sales of those products because they were packaged with other Johnson & Johnson products, right?
A. Well, perhaps, but if there was problems then with Guidant, that could actually be even worse for Johnson & Johnson because the bad news would carryover to all their other products. To me, it's highly speculative to even talk about this without doing analysis.
Q. That's what I want to end on. All of this, you can't say what would have happened if Johnson & Johnson had acquired Guidant, right?
A. Well, I haven't studied it. I might be able to say something about it --
Q. And just to be clear --
THE COURT: Just let him finish. You might be able to say something?
THE WITNESS: If I actually studied the question. He's putting forward a hypothesis that the size of Johnson & Johnson means that if J&J acquired it, the CRM business might

have done better. I think I could test that if I studied it. I haven't studied it.

THE COURT: Okay.

BY MR. COFFEY:

Q. Well, in fact, Professor, at your deposition you didn't know what CRM stood for, right?

A. Well, I'm terrible with acronyms. If you would have said cardiac rhythm management, I would have known it.

MR. COFFEY: I think I've already asked this, your Honor. I'm just double-checking.

Q. Oh, counsel elicited what I would call doubts about reliance on stock prices at the end of the year; is that fair?

A. Yes.

Q. Okay. But just to be clear, your affidavit specifically cites to the performance of the stock in the month of December, doesn't it?

A. I plotted, yes.

Q. And your affidavit nowhere says, by the way, Judge, be aware that you should view the stock prices at the end of the year with caution? You don't alert the judge to that in your affidavit, do you?

A. No.

MR. COFFEY: Thank you, Professor. Thank you, your Honor.

THE COURT: Okay. Mr. Ohlemeyer?

MR. OHLEMEYER: Just a few, your Honor, please.

REDIRECT EXAMINATION

BY MR. OHLEMEYER:

Q. And, in fact, you were asked at your deposition whether you knew what CRM stood for. Let me show you and see if this refreshes your recollection at Page 196, Line 7 through Line 12 -- I'm sorry, through Line 14. You were asked by Mr. Horowitz: "CRM standing for -- I'm going to do this to you just because Stu Baskin did it to Gregg Jarrell. What does CRM stand for?

"A. Cardiac rhythm management, something very close to that."

A. I said "rhythmic."

Q. Rhythmic. You came closer than Gregg did. Does that refresh your recollection that you actually answered that question at your deposition?

A. I guess I did. It's actually pretty accurate, given my hatred of acronyms. That's pretty much on the money.

Q. Let me ask you a couple of quick questions. If Ralph Lauren is not in the shoe business and they want to get into the shoe business, they need a business plan, don't they?

A. Yes.

Q. They need some market opportunity to exploit, don't they?

A. Yes.

Q. Do you know -- has anyone shown or have you seen any business plan or any testimony about Johnson & Johnson's

business plan for the cardiac rhythm management segment of the medical device industry?
A. No.
Q. And, in fact, if you wanted to know what Johnson & Johnson planned to do with Guidant in that area, would those questions be better directed to Mr. Weldon and Mr. Caruso or to you?
A. To the Johnson & Johnson people.
Q. All right. Now, at the time that this transaction was being contemplated, Johnson & Johnson understood that the value associated with this discounted cash flow and its projection was substantially influenced by the growth rates predicted for the CRM segment of the industry; isn't that right?
A. I recall them knowing that, and it's so obvious from the calculations that even if they didn't call it out, they would know that.
Q. And what actually happened in that industry between 2004 and today is a fact, isn't it?
A. Yes.
Q. And what anyone forecasted or predicted -- well, strike that.
What anyone forecasted about what was going to happen in the industry from 2004 to 2014 in 2004 was a prediction, right?
A. Correct.
Q. Now, before Johnson & Johnson raised its bid to $68 a

share, what was the reservation price revealed through its bidding behavior?
A. Of Johnson & Johnson?
Q. Yes.
A. 63.
Q. All right. And, finally, sir, Mr. Coffey I think asked you if synergies were a benefit; do you recall that question?
A. Not exactly, but go ahead, generally.
Q. In fact, synergies are a prediction, aren't they?
A. They're a predicted benefit. At the time that you do a transaction, you are predicting you are going to get these benefits of synergy.
Q. They're not something you can monetize on the day of an acquisition?
A. Typically not, no, because to monetize it, you'd have to flip the asset and the synergies are unique to you, and so you can't flip it.
Q. And, in fact, yesterday I think I recall you describing them, somewhat tongue in cheek, I think, as synergies being described as wishful thinking; isn't that right?
A. Well, I invest in a lot of -- I run a management investment firm and worry about these things. In my analysis and reading on synergies is people project them, but they often don't come to pass.
MR. OHLEMEYER: On that note, I'll sit down, your

Honor. Thank you.

THE COURT: Okay. Mr. Coffey, anything?

MR. COFFEY: No, your Honor. Thank you.

THE COURT: All right. Professor, you can step down.

THE WITNESS: Thank you, your Honor.

THE COURT: Safe trip. Are you going back to California?

THE WITNESS: Back tonight, yes.

THE COURT: Have a safe trip.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: All right. So what's next? I'm going to look at the video? Do you want to do that now, or do you want to take a quick break?

MR. WEINBERGER: A quick break, and then we'll do it. It's 20-something minutes.

MR. COFFEY: It's like a half hour.

THE COURT: So why don't we take a quick break. I can go forward, but people may be more comfortable if we take a short break now.

MR. OHLEMEYER: That's fine with me. Can we excuse Mr. Boies to do something across the street that he needs to do?

THE COURT: Sure.

MR. BOIES: Thank you, your Honor.

THE COURT: Thank you. So ten minutes.

(Recess)

THE COURT: Okay. Have a seat. So now we watch TV.

MR. WEINBERGER: This is Neal Stoll.

THE COURT: This is the transcript?

MR. COFFEY: Yes, so we'll be playing excerpts from the December 10th, 2010, deposition of Neal Stoll.

THE COURT: And this is the whole thing?

MR. COFFEY: It's not the whole deposition. It's the excerpts.

THE COURT: No, this is the whole thing that's going to be shown to me on the screen?

MR. COFFEY: Yes, it is, your Honor.

THE COURT: Well, it seems so short. It doesn't seem like that would take 30 minutes. He must talk really slow. Is he from Texas?

MR. COFFEY: I think, your Honor, you will quickly surmise that he is not from Texas.

THE COURT: Okay.

(Video being shown)

(Continued on next page)

(Videotape played continued)

MR. COFFEY: That completes the excerpts.

THE COURT: That's it then? Everybody is rested?

MR. OHLMEYER: Correct.

MR. WEINBERGER: We have a minor issue.

I've given this to defendant's counsel Plaintiff's Exhibit 41. This is the letter from Shearman & Sterling from 2008. The only reason this is being offered is for the statement on the bottom of the second page of the letter which describes the issue with respect to the Skadden emails that were not provided for Mr. Duwe, Mr. Mulaney and Ms. Rhoten. So I am going to hand that up so it is part of the record.

THE COURT: Is there an objection to this or no objection?

MR. OHLEMEYER: There is no objection, your Honor, but I think to be fair, there is more to the document than what Mr. Weinberger has described, but I assume we will have the opportunity to point that out to the Court.

MR. WEINBERGER: The document is in evidence. They can use whatever they want.

THE COURT: OK.

MR. WEINBERGER: The only part of our rebuttal case, we have given defense counsel two very short additional designations from Lawrence Best's testimony and we are waiting to get any counters they want and we will submit those as well.

With that, I think our case would be closed as well.

THE COURT: Then let's talk about next steps. I don't know if the parties want to do any kind of post trial briefing. I see nodding.

MR. WEINBERGER: We have discussed it, and I think if it is useful to the Court, what we think we would want to do is, first of all, submit updated proposed findings of fact.

THE COURT: With cites to the record.

MR. WEINBERGER: And their findings. For example, both sets of findings refer to testimony and to affidavits that have been stricken, so we want to give you something that actually reflects what's in the record.

THE COURT: Yes, including the crosses and my questions.

MR. WEINBERGER: Correct. So we agree on that.

We also agree that we should each have the opportunity to submit some sort of response to the other's proposed findings in some form, whether it is a brief or responsive findings, but we also agree that that would be useful.

I don't know that we agree on timing of that. I think that we haven't agreed on the timing of it, so we want to get some guidance from your Honor.

THE COURT: I want to move quickly for a number of reasons, but one of which is my law clerk is leaving the first week of February. So I think it is a lot easier for me to have

the law clerk who sat the trial and is aware of the case and fully immersed in it than to have somebody new coming on. That is why I would like to move relatively quickly.

MR. WEINBERGER: I think we are prepared to move as quickly as your Honor wants us to move. We would also request once those submissions have been made if we could have some closing argument.

THE COURT: Oral closing argument?

MR. WEINBERGER: Yes.

THE COURT: I'm fine with that.

Mr. Ohlemeyer, do you also want an oral closing argument?

MR. OHLEMEYER: I think so, your Honor. I think it would help the Court.

THE COURT: I think it could be helpful. A closing argument in a bench trial, I often will ask some questions. I might be more interactive than I would be at a jury trial. So it can be helpful.

I am not imaging we need something that is going to go days, something like Clarence Darrow. That's fine, we can schedule that.

I guess I would like to get just an updated and finalized exhibit list. Some things came in during the trial -- during the crosses and in the redirects, and I have copies but I have so many binders that I think it would be

useful to a have a CD that has all exhibits that were introduced during the trial. I would also like a CD that has all the depositions, videos and transcripts -- a CD that has all the videos. I guess the same CD can have a different file on it that is transcripts just so I have it all in one spot.

MR. WEINBERGER: The videos would be the ones we played here.

THE COURT: Right.

MR. COFFEY: To be clear, you don't want videos for all of the excerpts?

THE COURT: No. The videos of what were played here, and then I want the transcripts of those videos as well as the transcripts of the other deposition designations.

I need to get the swipe cards from the jury rooms once you've finished moving everything out, so let's not forget that.

In terms of post trial briefing and a schedule --

MR. WEINBERGER: Your Honor, given the time frame that you are suggesting, maybe what makes the most sense is to give you the updated proposed findings of fact somewhere like January 23; and instead of doing replies, to address any issues like that in closing arguments rather than have a second set of papers because I think it would probably be difficult to do both sets between now and then. We haven't discuss this, but that might make more sense.

THE COURT: What do you have in mind for the updated proposed findings of fact conclusions of law?

MR. WEINBERGER: We would redo them.

THE COURT: You mean rewrite them as opposed to just put cites to establish what points --

MR. WEINBERGER: A lot of it I think might be the same but I think having it in one document and having references to things before you probably would be the best way to do it. So that is what we have in mind. There will be some major changes and some not. It depends.

A lot of the references are to anticipated testimony, but there is obviously a lot of specific testimony that was brought out here that both parties I think will want to point to. So rather than have you working from two documents, we thought it made more sense -- we could also do a redline between the two versions.

THE COURT: I don't mind them doing the second version. I just wasn't sure how different it was going to be. If it was just basically putting in citations to the record for points that were made in the proposed findings of fact, then that would be easy, relatively easy. But if it is a rewriting and reformulating of arguments and it's a whole new brief, that obviously takes longer.

MR. WEINBERGER: I think it is somewhere in between. I don't think it is a whole new thing, but I think it is going

to be more than just plugging in a bunch of numbers.

THE COURT: Mr. Ohlemeyer?

MR. OHLEMEYER: I agree.

THE COURT: I think the issues, at least as I sort of hooked on to them in my mind, is sort of was there a breach. I'm starting to think pretty clearly there was.

Materiality, I think it certainly seems pretty clear to me that at the time of negotiating the agreement, the parties understood the importance of 4.02 and a breach of that provision sort of as what's been alleged here strikes me as probably pretty material.

Willfulness, I think, is the $64,000 question. I defined it in my earlier opinion of summary judgment ruling as -- trying to think how I described it -- acting with knowledge that breach would ensue. So, I think that is where a lot of the focus should be.

Causation, I think is also sort of a real issue. It is sort of but for the breach would this deal have closed at $63 a share. I think that is where the focus ought to be.

Damages, I think is as much a legal question as it is a factual question; perhaps more a legal question than a factual question as to what is the proper framework, the proper approach.

This is a breach of contract case and the concept of windfall is a relevant one. We're dealing with Indiana law,

which is different than Delaware law, I think, and is more involved than sort of you bought a cow, what do you get back if there was a breach? So I don't think there is a whole lot in Indiana law that is going to be right on point, but I think damages strikes me more about the framework than about the facts. I don't want to oversell that because there are some factual disputes as well.

So that is just to give you a little bit of a blueprint as to my thinking after having sat through the trial. I am going to think more about it, but that is where my head is at right now. There may be some points you want to move me off of that I am wrong in giving you my gut reaction as to breach or materiality, but I think it is useful to share with you what strikes me at least as of today. OK.

MR. WEINBERGER: So would January 23 for submissions be soon enough?

THE COURT: That is cutting it pretty close, I have to say. I had hoped for something a little sooner. I don't want to ruin everybody's Christmas and New Year's.

MR. WEINBERGER: We can do it the week before.

THE COURT: The week before, I think, would be preferable.

MR. WEINBERGER: January 16?

THE COURT: Yes.

MR. OHLEMEYER: I don't have a calendar in front of

me, your Honor, but I think January 16 strikes me as really ambitious for what we've done and what we're going to do and what you need.

THE COURT: What I was expecting, basically you're just going to cite me now the record cites for the various propositions that are in a previously submitted proposed findings of fact and conclusions of law. So I don't know how ambitious you intended this to be. I was at least under the impression that it was not going to be much more than that. It seems to me like you want to do a whole new set of briefs. Have the theories really radically changed since we started the trial?

MR. WEINBERGER: It's definitely not a new set. It's a little more than plugging in cites and a lot less than rewriting. We think it can be done. We don't see any -- I understand your Honor's time constraints, and we're prepared to get it done.

THE COURT: Mr. Ohlemeyer?

MR. OHLEMEYER: I understand your Honor's point. The 16th is a Friday. Monday gives us the weekend but it also takes the weekend away from you; I appreciate that. So if 16 is the date, we'll make it work.

THE COURT: OK.

MR. WEINBERGER: Maybe we could then pick a date for the arguments while we're all here.

MR. OHLEMEYER: I would like to confer on that just to -- like I said, I don't have my calendar. I have Mr. Boies' calendar in front of me. I don't want to slow it down, but if we can get back to the court on that.

THE COURT: I am looking at my calendar right now. I have a trial the week of the 26th, which is definitely going to go. I think the earliest I could do it is Friday, the 23rd.

MR. WEINBERGER: I'm supposed to be out of town from the 22nd to the 27th.

MR. OHLEMEYER: Perhaps the Court can give us some dates and we'll make one of them work.

THE COURT: Yes.

MR. OHLEMEYER: Rather than doing it a day at a time.

THE COURT: Would the 21st be too soon?

MR. WEINBERGER: That would work for me, your Honor.

THE COURT: Mr. Ohlemeyer? That's the earliest I think we could do it. I have to have time to absorb what you've sent me. Not that I am not going to be thinking about this in between and reviewing the voluminous stuff I've already got. I've got a lot, so that is the earliest I think we could do. After that I think probably we could do this -- maybe the morning of the 30th? Or February 2nd?

MR. WEINBERGER: Any of those are fine.

THE COURT: Mr. Ohlemeyer, do you want to check with Mr. Boies?

MR. OHLEMEYER: I will.

THE COURT: And get back to me maybe later today or tomorrow?

MR. OHLEMEYER: Certainly.

THE COURT: With respect to the final exhibit list, a CD that has all the exhibits, that sort of thing, can I get that sooner than the 16th?

MR. COFFEY: We can do that.

MR. WEINBERGER: A matter of days, I'm sure.

THE COURT: Is Monday doable, do you think?

MR. WEINBERGER: I'm sure.

THE COURT: I know that this -- look, I know how much work goes into a trial like this, and I appreciate the quality of the lawyering and the amount of support from lawyers and non-lawyers that go into a trial like this, so I am very reluctant to give a date like January 16 if it means it is going to ruin people's holidays. You know, I understand this pretty well. I do think I understand -- I don't think any of this testimony was just sort of washing over me, and I wasn't sort of following, so I don't think you have to be too worried about that. I think it is an opportunity you have that you want to synthesize and really sort of sharpen the key points you have been making throughout this trial I don't think they're terribly subtle points. I think I get most of what's been said here. Sometimes organization helps and sort of

lining it all up can be effective. That is what summations are for, but I am not too worried. So don't write me a from-scratch brief. I just think that would not be the best use of your time.

MR. WEINBERGER: We are not going to do that.

THE COURT: All right. Good.

Anything else I've overlooked?

(Pause)

THE COURT: I don't know how long it is going to take you to clear out of here. Leave the swipe cards -- leave it on the deputy desk here. I have something at 1:00. Otherwise, the room is yours until then. Thanks very much, folks.

And let me thank the court reporters.

(Adjourned)

INDEX OF EXAMINATION